

ORIGINAL

OPEN MEETING ITEM

10/27-28/16



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**COMMISSIONERS**  
DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

JODI JERICH  
EXECUTIVE DIRECTOR



**SECURITIES DIVISION**  
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Phoenix, AZ 85007  
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**ARIZONA CORPORATION COMMISSION**

**MEMORANDUM**

**TO:** Doug Little - Chairman  
Bob Stump  
Bob Burns  
Tom Forese  
Andy Tobin

**FROM:** Matthew J. Neubert *MJN*  
Director of Securities

**DATE:** October 11, 2016

**RE:** Proposed Order To Cease And Desist And Order For Administrative Penalties,  
Docket No. S-20975A-16-0208

**CC:** Jodi Jerich, Executive Director

Arizona Corporation Commission

**DOCKETED**

OCT 11 2016

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Please find attached a proposed Order to Cease and Desist and Order for Administrative Penalties ("Order") as to Gregory McClain. In April 2016, Georgia resident Gregory McClain ("McClain") offered unregistered securities and offered to provide investment advisory services for compensation in Arizona. McClain published advertisements on Craigslist soliciting investments of at least \$5,000. McClain's offer involved incentive fees ranging from 30% to 50% and claim to be able to generate returns in excess of 20% per month. McClain misrepresented the level of risk to potential investors, and failed to disclose that his trading strategy resulted in prior investors losing nearly all of their investments. McClain has not been registered with the Commission as a securities salesman, dealer, investment adviser, or investment adviser representative. In addition, the investments offered by McClain were not registered with the Commission.

On June 28, 2016, the Securities Division filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing against McClain. McClain was served on August 3, 2016, and has not filed a Request or Answer.

The Order finds that McClain violated A.R.S. §§ 44-1841 and 44-1842 by selling unregistered securities while being unregistered. In addition, the Order finds that McClain violated A.R.S. §§ 44-1991 and 44-3241 by making untrue statements of material fact or omitting to state material facts that were necessary in order to make the statements made not misleading. Accordingly, the Order

requires McClain to cease and desist from violating the Securities Act and Investment Management Act, and to pay an administrative penalty of \$12,000. The Division is not aware of any Arizona residents in this matter requiring an Order of Restitution. The Securities Division believes the proposed Consent Order is appropriate to protect the public welfare.

Originator: Chris Nichols

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3                                   **COMMISSIONERS**

4                                   DOUG LITTLE - Chairman  
5                                   BOB STUMP  
6                                   BOB BURNS  
7                                   TOM FORESE  
8                                   ANDY TOBIN

9                                   In the matter of:                                   ) DOCKET NO. S-20975A-16-0208  
10                                   GREGORY ALLEN MCCLAIN,                                   )  
11                                   Respondent.                                   ) DECISION NO. \_\_\_\_\_  
12                                   ) **ORDER TO CEASE AND DESIST AND**  
13                                   ) **ORDER FOR ADMINISTRATIVE**  
14                                   ) **PENALTIES**

15                                   On June 28, 2016, the Securities Division ("Division") of the Arizona Corporation Commission  
16                                   ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing  
17                                   against Respondent GREGORY ALLEN MCCLAIN.

18                                   On August 3, 2016, Respondent GREGORY ALLEN MCCLAIN was served. GREGORY  
19                                   ALLEN MCCLAIN did not file a Request for Hearing or an Answer to the Notice within the  
20                                   respective filing deadlines and has not filed a Request or Answer as of the date of this filing.

21                                   **I.**

22                                   **FINDINGS OF FACT**

- 23                                   1.       Respondent Gregory Allen McClain ("McClain") is a resident of Cobb County, Georgia.
- 24                                   2.       McClain is not registered with the Commission as a securities salesman, securities  
25                                   dealer, investment adviser, or investment adviser representative.
- 26                                   3.       At all relevant times, McClain was the sole managing member, CEO, treasurer, and  
secretary of Harmown Investment Group, LLC ("HIG"), a Georgia limited liability company dissolved  
in 2012.
4.       At all relevant times, McClain has been the CEO, treasurer, and secretary of Harmown,  
LLC ("Harmown"), an active Georgia limited liability company.

1           5.     In or around the summer of 2011, McClain and HIG published an advertisement  
2 ("Advertisement 1") on Craigslist.org, an online medium for offering goods and services.

3           6.     Advertisement 1 solicited money for investment and guaranteed a return of 10% to  
4 30% per month.

5           7.     A California resident ("Investor 1") responded to Advertisement 1.

6           8.     During subsequent communications with Investor 1, McClain and HIG guaranteed  
7 that they would reimburse Investor 1 for any losses he might sustain.

8           9.     Based on McClain's and HIG's guarantees, Investor 1 invested \$10,000 with McClain  
9 and HIG on August 17, 2011.

10          10.    At McClain's and HIG's instruction, Investor 1 opened an account with an online  
11 brokerage firm and gave McClain and HIG the authority to trade with his investment funds.

12          11.    By October 2011, McClain and HIG had lost most of Investor 1's investment.

13          12.    Investor 1 withdrew the remaining \$1,340 on October 11.

14          13.    McClain and HIG never reimbursed Investor 1 for the losses he sustained.

15          14.    On April 17, 2012, a Georgia resident ("Investor 2") invested \$10,000 with McClain  
16 and HIG after they guaranteed Investor 2 that they would generate profit for him.

17          15.    Investor 2 invested by creating and funding an account with an online brokerage firm  
18 and giving McClain and HIG authority to trade with his investment funds.

19          16.    By June 1, 2012, McClain and HIG had lost most of Investor 2's investment.

20          17.    On June 13, 2012, Investor 2 withdrew the remaining \$1,923.17 from his account.

21          18.    In July 2014, McClain and Harmown published a new advertisement ("Advertisement  
22 2") on Craigslist.

23          19.    Advertisement 2 solicited investments of at least \$5,000 and guaranteed a 20% return  
24 each month.

25          20.    Advertisement 2 also stated that if the account lost money, the investor would be  
26 entitled to reimbursement.

1           21.     A Nebraska resident ("Investor 3") responded to Advertisement 2.

2           22.     Based on McClain's and Harmown's guarantees, Investor 3 invested \$10,000 with  
3 McClain and Harmown on August 13, 2014.

4           23.     At McClain's and Harmown's instruction, Investor 3 opened an account with an  
5 online brokerage firm and gave McClain and Harmown the authority to trade with his investment  
6 funds.

7           24.     By mid-September 2014, McClain and Harmown had lost most of Investor 3's  
8 investment.

9           25.     Investor 3 withdrew the remaining \$3,725 from his account on September 11.

10          26.     McClain and Harmown never reimbursed Investor 3 for the losses he sustained.

11          27.     In July 2014, McClain and Harmown published another advertisement  
12 ("Advertisement 3") on Craigslist. Advertisement 3 was published in the Craigslist classifieds  
13 directed towards residents of Phoenix, Arizona.

14          28.     Advertisement 3 was titled "20% RETURN OR I'LL GIVE YOU \$500!!! (GA)" and  
15 solicited investment funds for currency trading.

16          29.     Advertisement 3 stated "I am a funds manager and am looking for the right people to  
17 grow with."

18          30.     Advertisement 3 also represented that "The maximum risk to the account will be 10%,  
19 but in an effort to build clientele faster, I am offering new clients the opportunity to invest essentially  
20 risk free."

21          31.     Advertisement 3 also stated that, "if at any time your account is negative 10%, I will  
22 fully refund that amount."

23          32.     On July 18, 2014, an Arizona resident working undercover for the Division ("UC 1")  
24 responded to Advertisement 3 via email. The email requested additional information regarding the  
25 nature of the investment and the ability to withdraw funds.  
26

1           33.     On July 19, 2014, McClain responded on behalf of Harmown to the July 18 email  
2 from UC 1. McClain's and Harmown's response stated that the investment arrangement was "a very  
3 unique structure focusing on protecting investment capital . . . ."

4           34.     The July 19 email to UC 1 also represented that "a \$5k investment would expect to  
5 yield a return of \$12k-\$18k in one year (20%-30%)" and that the investment was subject to a 30%  
6 incentive fee based on the realized profits for each month.

7           35.     The July 19 email to UC 1 also provided UC 1 with instructions as to commencing  
8 the investment. According to the email, UC 1 was to set up a managed account with Interactive  
9 Brokers "which allows [Respondents] to trade on [UC 1's] behalf while also trading other accounts  
10 under one platform with proportions being divided automatically according to account size."

11           36.     In the July 19, email, Respondents also represented that "the risk structure that I have  
12 in place is set up to allow the principle [*sic*] investment to remain intact while 20% - 30% returns are  
13 targeted."

14           37.     The July 19 email also reiterated Respondents' promise to refund any loss at the end  
15 of 90 days, and immediately refund any loss of 10%.

16           38.     In addition, the July 19 email requested a one-year commitment from UC 1.

17           39.     On July 23, UC 1 responded to McClain and Harmown via email. The email  
18 expressed UC 1's intent to invest \$5,000 and requesting documentation regarding the investment.

19           40.     On July 23, McClain responded to UC 1 on behalf of Harmown via email. The email  
20 confirmed that the agreement would be documented and attached the Harmown, LLC Currency  
21 Trading Agreement ("the Agreement").

22           41.     The Agreement identifies Harmown as the "Manager" and McClain as the "Asset  
23 Manager."

24           42.     The Agreement authorizes Harmown to use the investor's money to engage in  
25 currency trading, and provides that Harmown shall receive a 30% commission on a monthly basis.  
26

1           43.     The Agreement provides that "Client authorizes Manager to act on Client's behalf to  
2 buy, sell, and trade in the currency market."

3           44.     The investment contract offered by McClain and Harmown to UC 1 was not registered  
4 with the Commission as a security.

5           45.     Neither McClain nor Harmown disclosed to UC 1 that at, as of July 2014, McClain  
6 had previously entered into a similar agreement with Investors 1 and 2, and that McClain had lost  
7 most of their investment money.

8           46.     Neither McClain nor Harmown disclosed to UC 1 that McClain had promised to  
9 reimburse Investor 1 for any losses he sustained, but later failed to satisfy this promise.

10          47.     Neither McClain nor Harmown inquired as to UC 1's financial circumstances or  
11 whether UC 1 was an accredited investor.

12          48.     In or around April 1, 2016, McClain published another advertisement on Craigslist  
13 ("Advertisement 4").

14          49.     Advertisement 4 was published in the Craigslist classifieds directed towards residents  
15 of Phoenix, Arizona.

16          50.     Advertisement 4 is titled "\$5,000" and states that McClain is "looking for short term  
17 arrangements with people who can invest \$5000 or more for 2-4 weeks."

18          51.     Advertisement 4 also states that McClain is "focused on raising as much capital as  
19 possible."

20          52.     Advertisement 4 further provides that "I will double the amount of your initial  
21 investment within that time frame and my fee will be 50% of the realized profits."

22          53.     On April 21, 2016, an Arizona resident working undercover for the Division ("UC  
23 2") called McClain in response to Advertisement 4.

24          54.     Over the next few days, McClain and UC2 exchanged voicemails providing contact  
25 information to each other.

1           55.     On April 26, 2016, McClain sent an email to UC 2 regarding the investment offered  
2 in Advertisement 4. According to the email, UC 2 would create an account with an online broker  
3 and permit McClain to trade on UC 2's behalf.

4           56.     In the April 26, 2016 email, McClain represented that "My goal will be to double  
5 your account in 2 weeks, but it will generally happen within a 2-4 week period." McClain also stated  
6 in the email that, under the arrangement, he would be entitled to 50% of UC 2's profit at the end of  
7 each month.

8           57.     UC 2 responded to McClain's email on April 26, 2016. The email to McClain stated  
9 that UC 2 would like to invest but was inexperienced with trading.

10          58.     On April 27, 2016, McClain responded UC 2 via email. The email to UC 2 stated  
11 that McClain would set up an account for UC 2 with a broker and that UC could transfer the money  
12 via PayPal or wire transfer.

13          59.     On April 28, 2016, UC 2 responded to McClain via email. The email to McClain  
14 stated that UC 2 intended to invest \$10,000 and preferred to tender the investment money via wire  
15 transfer.

16          60.     On April 28, 2016, McClain responded to UC 2 via email. The email provided  
17 information to facilitate the wire transfer, including McClain's bank name and address, routing  
18 number, account number, and the account holder's name.

19          61.     The investment contract offered to UC 2 by McClain was not registered with the  
20 Commission as a security.

21          62.     McClain never disclosed to UC 2 that, as of July 2014, McClain had previously  
22 entered into a similar agreement with Investors 1, 2, and 3, and that McClain lost most of their  
23 investment money.

24          63.     McClain never disclosed to UC 2 that McClain had promised to reimburse Investors  
25 1 and 3 for any losses they sustained, but later failed to satisfy those promises.

26



64. McClain never inquired as to UC 2's financial circumstances or whether UC 2 was an accredited investor.

## II.

## CONCLUSIONS OF LAW

65. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act, and the IM Act.

66. Respondent offered securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15) and 44-1801(26).

67. Respondent violated A.R.S. § 44-1841 by offering securities that were neither registered nor exempt from registration.

68. Respondent violated A.R.S. § 44-1842 by offering securities while neither registered as a dealer or salesman nor exempt from registration.

69. Respondent violated A.R.S. § 44-1991 by, in connection with the offer of securities within or from Arizona, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:

a) Representing to UC 1 that the investment strategy employed a “very unique structure focusing on protecting investment capital” while intending to trade in highly volatile foreign currency markets and omitting that the investment strategy had lost nearly all of Investor 1’s and Investor 2’s investments;

b) Representing to UC 1 that a 20% to 30% return was expected but omitting that the investment strategy had lost nearly all of Investor 1's and Investor 2's investments;

1           c)       Representing to UC 1 that “the risk structure that I have in place is set up to  
2 allow the principle [*sic*] investment to remain intact” but omitting that the investment strategy  
3 required risk to the principal, and that the investment strategy resulted in Investors 1 and 2 losing  
4 nearly all of their principal;

5           d)       Promising UC 1 that he would be reimbursed for certain losses but omitting that  
6 he had failed to satisfy a similar promise to Investor 1; and

7           e)       Representing to UC 2 that his investment would double in two to four weeks but  
8 omitting that the investment strategy had lost nearly all of Investor 1’s, Investor 2’s, and Investor 3’s  
9 investments.

10         70.       Respondent violated A.R.S. § 44-3241 by engaging in a transaction or transactions  
11 within or from Arizona involving the provision of investment advisory services in which Respondent  
12 was, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue  
13 statements of material fact or omitting to state material facts that are necessary in order to make the  
14 statements made not misleading in light of the circumstances under which they are made; (iii)  
15 misrepresenting professional qualifications with the intent that the client rely on the misrepresentation;  
16 or (iv) engaging in transactions, practices, or courses of business that operate or would operate as a fraud  
17 or deceit. Respondent’s conduct includes, but is not limited to, the following:

18           a)       Representing to UC 1 that the investment strategy employed a “very unique  
19 structure focusing on protecting investment capital” while intending to trade in highly volatile foreign  
20 currency markets and omitting that the investment strategy had lost nearly all of Investor 1’s and  
21 Investor 2’s investments;

22           b)       Representing to UC 1 that a 20% to 30% return was expected but omitting that  
23 the investment strategy had lost nearly all of Investor 1’s and Investor 2’s investments;

24           c)       Representing to UC 1 that “the risk structure that I have in place is set up to  
25 allow the principle [*sic*] investment to remain intact” but omitting that the investment strategy  
26

1 required risk to the principal, and that the investment strategy resulted in Investors 1 and 2 losing  
2 nearly all of their principal;

3 d) Promising UC 1 that he would be reimbursed for certain losses but omitting that  
4 he had failed to satisfy a similar promise to Investor 1; and

5 e) Representing to UC 2 that his investment would double in two to four weeks but  
6 omitting that the investment strategy had lost nearly all of Investor 1's, Investor 2's, and Investor 3's  
7 investments;

8 71. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. §§ 44-  
9 2032 and 44-3292.

10 72. Respondent's conduct is grounds for administrative penalties under A.R.S. §§ 44-  
11 2036 and 44-3296.

### 12 III.

### 13 ORDER

14 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission  
15 finds that the following relief is appropriate, in the public interest, and necessary for the protection of  
16 investors:

17 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032 and 44-3292, that Respondent, and any of  
18 Respondent's agents, employees, successors and assigns, permanently cease and desist from  
19 violating the Securities Act and IM Act.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036 and 44-3296, that Respondent  
21 shall pay an administrative penalty in the amount of \$12,000. Payment is due in full on the date of  
22 this Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue  
23 interest as allowed by law.

24 ...

25 ...

26 ...

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN LITTLE

COMMISSIONER STUMP

COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

IN WITNESS WHEREOF, I, JODI A. JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2016

JODI A. JERICH  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

(SCB)

1 Service List for: Gregory McClain

2 Gregory McClain  
3 5904 Vintage Oaks Pass  
4 Mableton, GA 30126  
5 Respondent

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**DOUG LITTLE – Chairman**  
**BOB STUMP**  
**BOB BURNS**  
**TOM FORESE**  
**ANDY TOBIN**

**GREGORY ALLEN MCCLAIN,**  
**Respondent.**

**NOTICE OF FILING OF PROPOSED  
OPEN MEETING AGENDA ITEM**

On this 11<sup>th</sup> day of October, 2016, the foregoing document was filed with Docket Control as a Securities Division Memorandum & Proposed Order, and copies of the foregoing were mailed on behalf of the Securities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

Gregory McClain  
5904 Vintage Oaks Pass  
Mableton, GA 30126  
Respondent

By:

Jennie L. Priddy

Decision No. \_\_\_\_\_